

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

CPG ASHFORD AVENUE LPSE D/B/A
RADISSON AMBASSADOR PLAZA HOTEL &
CASINO¹

Employer

WORKERS UNITED a/w SEIU

Petitioner

24-RC-8646

and

UNITE HERE, Union de Trabajadores de la
Industria Gastronomica, Local 610

Incumbent-Intervenor

DECISION AND DIRECTION OF ELECTION

Upon the filing of a petition under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.²

Upon the entire record in this proceeding³, the undersigned finds:

¹ The Employer's name appears as amended at the hearing.

² The Employer and the Incumbent Intervenor filed briefs in support of their respective positions which were duly considered.

³ At the hearing the parties presented their respective positions regarding the blocking of the petition by a pending unfair labor practice charge. The Region subsequently determined that

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act⁵.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Employer at its Radisson Ambassador Plaza Hotel & Casino in San Juan, Puerto Rico, in the following departments: housekeeping, food & beverage, laundry and telephone department employees but excluding all executive and office personnel, professional personnel, front office employees, repair & maintenance employees, managers, assistant managers, secretaries to the executives, confidential employees, controllers or auditors, assistant controllers, night auditors, food & beverage controller, accounts receivable supervisors, accounts payable supervisor, payroll supervisor, credit manager, personnel manager, head cashier (front office and food and beverages), head storeroom and receiving, cashier supervisor (overnight shift only), musicians, guards and supervisors as defined in the Act.

There are approximately 116 employees in the unit.

related unfair labor practice charges blocked the petition. As these charges have been withdrawn, the processing of the petition is resumed.

⁴ CPG Ashford Avenue LPSE d/b/a Radisson Ambassador Plaza Hotel & Casino is a corporation organized under the laws of Delaware, with office and place of business in San Juan, Puerto Rico where it has been engaged in the operation of a hotel and casino. During the past year, the Employer received revenues in excess of \$500,000. During this same period, the Employer, in conducting its business operations, purchased and received goods and materials valued in excess of \$50,000.00 directly from points located outside the Commonwealth of Puerto Rico.

⁵ The petition was timely filed during the window period of the collective bargaining agreement between the Employer and the Intervenor then in effect. Thus, there is no contract bar to the processing of the petition.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Workers United a/w SEIU, UNITE HERE Union de Trabajadores de la Industria Gastronomica, Local 610 or neither of the above labor organizations. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or

reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **June 16, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The

list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁶ by mail, or by facsimile transmission at (787) 766-5424. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street,

⁶ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **June 23, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁷ but may not be filed by facsimile.

DATED: June 9, 2010



/s/

Marta M. Figueroa
Regional Director, Region 24
National Labor Relations Board
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⁷ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.